

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-70 (Sub-No. 4X)

FLORIDA EAST COAST RAILWAY, L.L.C. – ABANDONMENT EXEMPTION – IN
MIAMI-DADE COUNTY, FL

MOTION FOR PROTECTIVE ORDER

Decided: July 28, 2005

By petition filed on April 19, 2005, Florida East Coast Railway, L.L.C. (FEC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a portion of its South Little River Branch Line extending from milepost LR 13.0 \pm to milepost LR 18.0 \pm , a distance of approximately 5 miles in Miami-Dade County, FL.

By motion filed on July 26, 2005, Hust Brothers, Inc. (Hust), requests a protective order in connection with its forthcoming offer of financial assistance.¹ Hust states that certain documents that may include the parties' respective estimates of the net liquidation value of the real estate comprising the right-of-way of the line along with supporting data reflecting available real estate appraisals, deeds, and other relevant evidence of title are confidential. Hust seeks a protective order to allow the parties to exchange these documents with one another and to file them under seal with the Board. Issuance of the requested protective order will ensure that the Confidential Information will be used only in connection with this proceeding and not for any other business or commercial purpose. Hust also states that FEC concurs in this motion.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted.

It is ordered:

1. The motion for protective order is granted.
2. The parties are directed to comply with the protective order in the appendix to this decision.

¹ A proposed protective order and undertaking were included with the motion.

3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

Protective Order

1. For the purpose of this Protective Order, “Confidential Information” means the real estate appraisal and all supporting documents furnished in connection with the abandonment exemption sought by Florida East Coast Railway, L.L.C. in the above-captioned matter along with any filings and evidence submitted by Hust Brothers, Inc. in connection with an offer of financial assistance made in this proceeding.
2. The Confidential Information shall be provided to any employee, agent, counsel, or consultant of Hust Brothers, Inc. only pursuant to this Protective Order and only upon execution and delivery to Florida East Coast Railway, L.L.C. of the attached Undertaking. The Confidential Information shall be used solely for the purpose of this and any related Board proceedings or judicial review proceeding arising therefrom, and not for any other business, commercial or competitive purpose.
3. The Confidential Information shall not be disclosed in any way or to any person without the written consent of Florida East Coast Railway, L.L.C. or an order of the Board, except to an employee, agent, counsel, or consultant of a party to this proceeding, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.
4. Any documents containing the Confidential Information must be destroyed, and notice of such destruction must be served on Florida East Coast Railway, L.L.C. at the completion of this and any related Board proceedings, or any judicial review proceedings arising therefrom, whichever comes later.
5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedures set forth at 49 CFR 1104.14.
6. If any party intends to use the Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceedings arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with this Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

Undertaking

Confidential Material

I, _____, have read the Protective Order governing the filing of Confidential Information by Florida East Coast Railway, L.L.C. in STB Docket No. AB-70 (Sub-No. 4X) and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-70 (Sub-No. 4X) or any judicial review proceeding taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that Florida East Coast Railway, L.L.C. shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Name

Position/Affiliation